

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB IN 06-03
SPONSOR(S): Insurance Committee
TIED BILLS:

Motor Vehicle Insurance
IDEN./SIM. BILLS: SB 2114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Insurance Committee		Tinney	Cooper
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

All sections of law comprising the No-Fault/PIP laws are scheduled to repeal October 1, 2007 unless reenacted by the Legislature during its 2006 regular session. The bill makes the following major changes to the current No-Fault/PIP laws:

- Amends the law authorizing civil remedies against insurers for specified actions to require both a first and third party to give an auto insurer 60 days notice before filing a civil action, including allegations of bad faith.
- Increases PIP benefits by 1) raising disability/lost wages from 60 percent to 70 percent; 2) eliminating deductibles and co-payments; 3) increasing the death benefit from \$5,000 to \$7,000; and 4) creating an additional \$10,000 benefit specifically for catastrophic injuries requiring treatment in an emergency room, trauma center, or as a hospital patient.
- Clarifies that workers' compensation benefits are primary over PIP benefits.
- Clarifies and updates billing and coding requirements for PIP benefits.
- Requires motorcyclists, aged 16 to 21 to purchase medical payments coverage and property damage liability coverage in the amount of \$10,000 per coverage.
- Requires health care and service providers to maintain patient records for 5 years after the last patient contact.
- Requires service providers who render non-emergency services to send a statement of charges to the insurer within 35 days of initiating treatment.
- Authorizes charges for emergency care and services to be sent to an insurer within 75 days after treatment.
- Specifies new procedures for use in determining the validity and priority of one or more assignment of benefits.
- Requires an insured to request an insurer to reserve benefits for lost wages in writing;
- Restricts venue for a PIP lawsuit to the jurisdiction where the injured party resides or where the accident occurred, or in the judicial circuit where services were provided if an insured has assigned his or her benefits to a service provider.
- Increases the notice requirements provided by a demand letter from 15 to 21 days.
- Requires the medical records of an injured person be available at the provider's principal place of business within 15 working days after receipt of an insurer request to review the records.
- Clarifies which persons are subject to an examination under oath and specifies that the insurer must pay \$175 per hour for a specified licensed health care provider to attend such an examination.
- Requires that notice to an insurer of the existence of a claim must be reported by the insured within 1 year of the accident.
- Outlines procedures for independent medical examinations (IMEs).
- Eliminates the application of a contingency risk multiplier to awards of attorney fees.
- Deletes the pending repeal of the No-Fault Law, currently scheduled for October 1, 2007.
- Amends various other laws relating to matters and criminal activities involving insurance fraud.

There is a fiscal impact associated with implementing the bill. See the Fiscal Analysis & Economic Impact section of the analysis for more detailed information.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure Lower Taxes—An additional fine of \$180 is added by the bill to the cost for a driver to reinstate his or her driver license following a conviction of specified crimes relating to motor vehicle insurance fraud.

Provide Limited Government—The bill maintains the basic premise of Florida's Motor Vehicle No-Fault Insurance Law by reenacting and amending several provisions relating to policyholder benefits and legal actions resulting from auto claims.

Safeguard Individual Liberty and Promote Personal Responsibility—Florida's laws still will require all registered drivers to purchase a basic level of personal injury protection (PIP) and property damage (PD) auto insurance to protect both the vehicle driver and other persons in the event of an auto accident. Under the bill, motorcyclists, aged 16 to 21 also will be required to purchase similar vehicle insurance coverage to pay for their own injuries and for damages caused to the property of others.

B. EFFECT OF PROPOSED CHANGES:

Background¹

In 1971, Florida became the second state in the country to adopt a no-fault automobile insurance plan.² The no-fault reform was offered as a viable replacement for the tort system as a means to quickly and efficiently compensate injured parties in auto accidents regardless of fault. Several sections in the Florida Insurance Code comprise Florida's Motor Vehicle No-Fault Insurance Law.³ All those sections of law are scheduled to repeal October 1, 2007 unless reenacted by the Legislature during its 2006 regular session, provided the reenactment takes effect for policies issued on or after October 1, 2007.⁴

Florida's Motor Vehicle No-Fault Insurance Law (Current Provisions, Mandatory and Optional Coverages, Tort Threshold, Financial Responsibility)

Under current law, motorists are required to purchase personal injury protection (PIP) and property damage (PD) liability coverages. The no-fault coverage, referred to as PIP, provides \$10,000 of coverage for the following: payment of 80 percent of reasonable medical expenses, 60 percent for disability and lost wages, plus a \$5,000 death benefit. These benefits cover bodily injury sustained in a motor vehicle accident, without regard to fault.⁵ Personal injury protection covers the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons struck by the insured motor vehicle.⁶ This coverage also provides the policyholder with immunity from liability for economic damages (medical expenses) up to the \$10,000 policy limits and for non-economic damages (pain and suffering) for most injuries.⁷

¹ A detailed history of the No-Fault Law, its current provisions, and other similar information is available in *Review of Florida's No-Fault Automobile Insurance Law*; House Insurance Committee; February 2006; available at: <http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&Committeeld=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

² Chapter 71-252, Laws of Florida.

³ The affected sections are: ss. 627.730, 627.731, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S. Insurers are authorized to provide, in all policies issued or renewed after October 1, 2006, that such policies may terminate on or after October 1, 2007.

⁴ Chapter 2003-411, LOF, s. 19.

⁵ Section 627.736(1), F.S., 2005.

⁶ Id.

⁷ Section 627.736(3), F.S., 2005.

Specifically, the immunity provision protects the insured from tort actions by others (and conversely, the insured may not bring suit to recover damages) for pain, suffering, mental anguish, and inconvenience arising out of the vehicle accident, except in the following cases:

1. significant and permanent loss of an important bodily function;
2. permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement;
3. significant and permanent scarring or disfigurement; or
4. death.

This is known as the “verbal threshold” which means that suits for pain and suffering may commence only if injuries meet these levels of seriousness.⁸

Current law also requires vehicle owners to obtain \$10,000 in property damage (PD) liability coverage which pays for the physical damage expenses caused by the insured to third parties in the accident. Additionally, under Florida’s Financial Responsibility law, motorists must provide proof of ability to pay monetary damages for bodily injury liability (BI) and PD liability after motor vehicle accidents or serious traffic violations. The minimum amounts of liability coverage are \$10,000 in the event of injury to one person, \$20,000 for injury to two or more persons, and \$10,000 property damage, or \$30,000 combined single limits.⁹

Many drivers purchase “optional” coverages in addition to mandatory insurance including bodily injury liability, uninsured motorist, collision, comprehensive, medical payments, towing, rental reimbursement and accidental death and dismemberment. Insurers may not require motorists to purchase any of these optional coverages.¹⁰

The Legislature has amended the No-Fault Law at least 50 times since the law was enacted in 1971, however, the law has not been reorganized during the 35 year period since its enactment.¹¹ Since the mid-1990s, lawmakers, insurers, and others have become aware that fraud and abuse are seen frequently in PIP claims. As recently as 2001 and 2003, the Legislature acted to curtail fraud in auto insurance claims.¹² However, according to insurers and investigators of the Division of Insurance Fraud of the Department of Financial Services (DFS), these reforms have not gone far enough in resolving the problems within the no-fault system which include fraud, abuse, inappropriate medical treatment, inflated claims, inadequate compensation to victims, increased premiums, and the proliferation of law suits.¹³

As a result of these concerns, in 2003 the Legislature repealed the Florida Motor Vehicle No-Fault Law, effective October 1, 2007, unless reenacted by the Legislature during the 2006 Regular Session and such reenactment takes effect for policies issued or renewed on or after October 1, 2006.¹⁴ In preparation for the pending repeal of the No-Fault Law, both the Senate and the House of Representatives directed their respective standing committees having jurisdiction over insurance matters to review the laws before their scheduled repeal.

In the House, the Insurance Committee completed the review, including dedicating all or most of three committee meetings to hearing from parties interested in the future of the No-Fault Law. A report of the

⁸ Section 627.737, F.S., 2005.

⁹ Section 324.021(7), F.S., 2005.

¹⁰ For a discussion of the optional coverages available to drivers in Florida, see *Review of Florida’s No-Fault Automobile Insurance Law*; House Insurance Committee; February 2006; pp. 17-19; available at:

<http://www.myfloridahouse.gov/Sections/Documents/loadaddoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

¹¹ *Id* at p. 8.

¹² See chapter 2001-271, LOF and chapter 2003-411, LOF.

¹³ See *supra*, Note 9; pp. 39-52.

¹⁴ Chapter 2003-411, LOF, s. 19.

committee's findings was published in February 2006.¹⁵ Similarly, the Senate Banking and Insurance Committee undertook a review of the laws, produced a report on the issue, and spent several committee meetings also hearing from stakeholders interested in the future of the No-Fault laws.¹⁶

Both the House and Senate substantive committees with oversight of insurance issues found in their reviews of the No-Fault laws that fraud and abuse continue to appear in auto claims for PIP services and treatment. As a result, both committees recommended legislative consideration of committee bills to reenact the No-Fault laws while further attempting to curtail fraud in auto claims.

Current Law and Changes Proposed by the Bill

Purpose

Section 627.731, F.S., outlines the purpose of the No-Fault Law. The purpose is amended by the bill to specify that one reason for the No-Fault Law is to limit the right to claim non-economic or general damages. Such damages may include pain, suffering, mental anguish, physical impairment, loss of the ability to enjoy life, and inconvenience.

Definitions

Section 627.732, F.S., contains definitions for terms used throughout the No-Fault Law. For example, current law defines such terms as "broker," "motor vehicle," "owner," "relative residing in the same household," "knowingly," and "hospital," among several other words and terms. New definitions are added to the law, including definitions for the words services, contracted services, rendered, licensed facility, clinic, procedurally appropriate, and non-economic or general damages. The bill also amends the current definition of broker.

The word "services" is defined to mean treatment, procedures, supplies and equipment. The term "contracted services" means goods or services provided or performed by anyone other than an employee of a supplier or provider. Under the Internal Revenue Service code, a statutory employee, as opposed to an independent contractor, is an employee whose employer must treat them as employees for social security tax purposes. Generally an employer is required to withhold federal income taxes, withhold and pay social security and Medicare taxes, and pay unemployment tax on wages paid to a statutory employee.

The word "rendered" is defined by the bill to mean a treatment or service which is actually performed. A licensed facility is defined as a clinic licensed as required by chapter 395, F.S., relating to hospital licensing and regulation. The bill defines "clinic" to mean an entity defined by s. 400.9905(4), F.S. of the Health Care Clinic Act. The term "procedurally appropriate" is defined to mean care which ensures a reasonable standard of care for the health and well-being of the patient. The definition specifies that "procedurally appropriate" care also follows the treatment protocols generally recognized in the chapter of the Florida Statutes under which the provider is licensed; is generally recommended as a treatment offered by other licensed practitioners for similar injuries, among other, similar provisions.

The bill also defines the term "non-economic" damages and adds the term "general damages" to the same definition. As proposed, non-economic or general damages are those damages, by whatever name, that are indefinite and for which an actual dollar figure cannot be measured. Included in the definition of "non-economic damages" are considerations for pain and suffering, mental anguish, physical impairment, loss of capacity to enjoy life, and inconvenience if any of these characteristics arises from the ownership, maintenance, ownership, or use of a motor vehicle.

¹⁵ See *Review of Florida's No-Fault Automobile Insurance Law*, House Insurance Committee; February 2006; available at: <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2246&Session=2006&DocumentType=Reports&FileName=Review%20of%20FL%20auto%20ins%20law.pdf>; viewed March 24, 2006.

¹⁶ The Senate Committee on Banking and Insurance issued a report of its review of the No-Fault Laws entitled *Florida's Motor Vehicle No-Fault Law*, Report #2006-102; November 2005; available at http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-102bilong.pdf; viewed March 24, 2006.

The bill also amends the definitions for several terms currently defined. For example, the definition for “broker” is clarified and shortened. Under the bill, a broker is a person or entity who acts as an intermediary for compensation who arranges for another person or entity to provide services.

Required Security

Section 627.733, F.S., specifies that the owner or registrant of a motor vehicle must purchase the required PIP and PD coverages required by s. 324.021(7), F.S. as the security required for all licensed drivers and registered vehicles. That law, a part of the state’s Financial Responsibility law, requires motorists to provide proof of ability to pay monetary damages for bodily injury liability (BI) and PD liability following involvement in or conviction of charges resulting from motor vehicle accidents or serious traffic violations. The minimum amounts of liability coverage are \$10,000 in the event of injury to one person, \$20,000 for injury to two or more persons, and \$10,000 property damage, or \$30,000 combined single limits. The No-Fault law requires a driver to purchase PIP coverage of \$10,000 per person.

Motorcycle Insurance Laws¹⁷

In its review of Florida’s No-Fault/PIP laws for motor vehicles, the House Insurance Committee also considered whether it might be appropriate to require motorcyclists to carry mandatory insurance for first-party medical (i.e., medical payments or “Med Pay” coverage) and PD coverage. As a result, staff researched other states and their respective insurance requirements for motorcycles in order to compare requirements throughout the country.

Most states have required automobile drivers to demonstrate financial responsibility for damages and injuries caused with their motor vehicles since the 1940s and 1950s. Many states currently also require some form of compulsory liability coverage for motorcycle drivers, as well, although the type of coverage or insurance for motorcycles varies widely among the states.

Florida, New Hampshire, Tennessee, and Wisconsin require drivers to meet a preset financial requirement instead of requiring insurance. Tennessee and Wisconsin, for example, require drivers to be financially responsible for \$25,000 in personal injury damage for one person, or \$50,000 for injuries sustained by a driver and any other passengers. It also requires the driver to show that he or she can pay \$10,000 for the other person’s property damage. Most other states require insurance coverage in a similar fashion.

In addition to the compulsory liability requirements, no-fault states (except Florida), require motorcyclists to carry personal injury protection (PIP) insurance. These states include Hawaii, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Dakota, Pennsylvania and Utah.

Florida’s Motorcycle Insurance Law

Current law in Florida does not require registered motorcycle drivers to carry PIP and property damage coverage. The Department of Highway Safety and Motor Vehicles (DHSMV) reports that Florida is one of only four states including New Hampshire, Tennessee, and Wisconsin not to require minimum property damage and bodily injury insurance coverage for licensed motorcyclists.

The law (s. 316.211, F.S.), governs the use of motorcycle equipment in Florida. Current law generally does not require registered motorcycles and drivers licensed to drive motorcycles to carry PIP and property damage coverage. The same law outlines the conditions under which a motorcyclist in Florida must carry insurance. That law authorizes motorcyclists over the age of 21 to ride a motorcycle without

¹⁷ See *supra*, Note 9; pp. 28-32.

the required headgear (helmet) if the licensed driver has \$10,000 in medical benefits for injuries resulting from a motorcycle crash.

It is an important distinction that the Florida law requiring a motorcyclist to carry insurance specifies that the motorcyclist be “. . . covered by an insurance policy providing for at least \$10,000 in medical benefits for injuries incurred as a result of a crash” This imperative for “\$10,000 in medical benefits” does not require a motorcyclist to carry PIP or property damage coverage, however. DHSMV indicates that a motorcyclist who is covered by a general health insurance policy or health maintenance organization meets the legal requirement for having \$10,000 in medical benefits.

Staff of DHSMV reports that an estimated 95 percent of licensed motorcyclists in Florida meet the requirement of having at least \$10,000 in medical coverage.¹⁸ The department further notes, however, that most serious injuries resulting from a motorcycle crash in which treatment is provided to the victim in an emergency room, cost more than \$10,000.¹⁹

Changes Proposed by the Bill Relating to Motorcycles

The bill requires motorcyclists, aged 16 to 21 to purchase medical payments coverage and PD coverage in the amount of \$10,000 per coverage. This requirement is substantially similar to current insurance requirements for licensed drivers and registered motor vehicles, however, the required motorcycle coverage is not no-fault coverage. Provisions regarding motorcycle insurance coverage are created in a newly-created section of law: s. 627.7441, F.S.

Civil Remedies Against Insurers

Section 624.155, F.S., authorizes any person to bring an action against an insurer for a violation of enumerated sections of law, including, for example, specified violations of the Unfair Methods of Competition and Unfair or Deceptive Practices in s. 626.9541, F.S. The law also authorizes such civil actions against an insurer for not attempting in good faith to settle a claim as provided by the policy; failing to settle claims promptly (except for liability claims), once an obligation to settle the claim has become reasonably clear, in order to influence settlements pending under other portions of the policy; and for other similar actions.

The bill amends the law authorizing civil remedies as the provisions relate to civil actions, including allegations of bad faith against an auto insurer. As proposed by the bill, both a first party and a third party are required to give notice of the intent to sue an auto insurer 60 days before initiating such an action.

Changes Proposed by the Bill: Required PIP Benefits; Exclusions; Priority; Claims

In current law, the requirements and exclusions for PIP coverage are outlined by s. 627.736, F.S. The bill reorganizes this section of law in order to clarify its meaning and intent. As it is currently structured, the law contains so much information, it is sometimes difficult to identify and locate specific provisions. The bill reorganizes the law by including logical subheadings to enable readers to locate provisions more easily. Much of the current law is maintained, although it may be relocated under a new subheading. The new subsections and the major changes to the law in each subsection are described below.

¹⁸ See *supra*, Note 9; p. 30.

¹⁹ *Id.*

Section 627.736(1), (2), and (3): Required Personal Injury Benefits

The benefits available to policyholders under PIP coverage are expanded. Medical benefits will be payable at 100 percent (increased from 80 percent) of the reasonable expenses for medically necessary and procedurally appropriate medical, surgical, X-ray, dental, and rehabilitative services and devices. This change eliminates the PIP deductible and requirement for the policyholder to co-pay for services.

The death benefit is increased from \$5,000 to \$7,000. Disability benefits, available for lost wages, are increased from 60 to 70 percent. As proposed by the bill, an injured person who is self-employed or an injured person who owns over a 25 percent interest in his or her employer is required by the bill to produce to the insurer reasonable proof of net income and loss of earning capacity, as a condition for receiving payment for lost wages. The bill requires an insured who wishes to reserve all or part of PIP benefits for lost wages to notify the insurer in writing. Receipt of this notification will take priority over all claims subject to an assignment of benefits received after receipt of such notice. An exception is provided for properly perfected hospital liens that take priority over the insured's election to reserve benefits for lost wages.

The bill also provides an additional \$10,000 benefit for emergency services and care if the services and care are determined by the treating physician to be necessary due to injuries received in a motor vehicle accident. The term "emergency services and care" is defined by s. 395.002(10), F.S., to mean medical screening, examination, and evaluation by a physician or other authorized personnel to determine whether an emergency medical condition exists and, if it does, the care, treatment, or surgery by a physician to eliminate the emergency medical condition.

The additional benefit for emergency care and services is available to the named insured; his or her parents and stepparents; his or her spouse and children, whether natural, adopted, or stepchildren, all of whom must reside in the home of the insured. Ambulance transportation and care rendered in the ambulance also are covered by the additional benefit. Charges due for in-patient hospital admissions also are covered by the additional benefit for emergency care and services.

Under the bill, all charges relating to emergency services and care, including inpatient services, are covered by the additional emergency care benefit. As a result, an accident victim has \$20,000 in benefits available for injuries resulting from an auto accident, if treatment is initiated in an emergency room or trauma center. If a policyholder is involved in a minor accident and does not seek emergency care and treatment, the current benefit of \$10,000 for medical care and services remains available to pay for necessary care and services.

No-Fault Claims and Medicaid

Current law regarding Medicaid payment for injuries resulting from an auto accident also is moved. Current law and the relocated provisions require auto insurance benefits to comply with the state's Medicaid laws.

Available Benefits; Denial of Benefits

The bill states that an otherwise-covered injury that occurs while a person is fleeing or trying to elude arrest or detainment by a law enforcement officer is not covered by PIP benefits. An insurer is authorized by the bill to assert that a claim is not properly payable as specified by law.

In subsection (4), the bill clarifies that an injured person who is entitled to bring suit under the No-Fault Law has no right to recover damages for which PIP benefits are paid, payable, or otherwise available. The phrase, "or otherwise available," refers to future PIP benefits for which a claim has not been filed.

Workers' Compensation Benefits and No-Fault Benefits

Under subsection (7) governing claims submission, the bill clarifies that workers' compensation benefits are primary over PIP benefits. This primacy of workers' compensation benefits over PIP benefits is only applicable if an insured person is injured while at work. The bill also requires that a parent or legal guardian of an insured minor complete an application for PIP benefits on behalf of the minor, upon request of the insurer.

Billing Requirements

The bill clarifies and updates the billing and coding requirements for PIP benefits under paragraph (7)(b). Health information coding generally involves translating verbal descriptions of diseases, injuries, and procedures into numeric or alphanumeric designations. Currently, reimbursement of hospital and physician claims for Medicare patients depends entirely on the assignment of codes to describe diagnoses, services, and procedures provided.

The bill requires all billings for services to comply with the Health Care Procedure Coding System (HCPCS) and the Physicians' Current Procedural Terminology (CPT) coding system because HCPCS is a broader term that includes both the CPT coding system and the national coding system. The current statutory reference to ICD-9 is removed and the correct, updated term is inserted: the International Classification of Diseases (ICD-9-CM). The "CM" refers to clinical modification and it is updated annually through a review process in order to make codes more precise due to new discoveries and medical advancements.

To determine compliance with applicable HCPCS and ICD-9-CM coding, the bill adds the National Correct Coding Initiative to the current requirements because the NCCI identifies codes that should not be billed on the same date of service (mutually exclusive codes) or without an appropriate modifier. The bill clarifies that a statement of medical services may not include charges for services if the person who performed the services does not possess all valid qualifications and licenses to lawfully provide such services.

Access to Patient Records; Time Periods for Providers to Bill Insurers; Payment Log

Under paragraph (7)(c), relating to directly billing an insurer for medical fees and services, a provider is required to maintain specified patient records for 5 years after the last patient contact. This language is substantially the same as the requirement for physicians to maintain patient records for 5 years as provided by the Department of Health in Rule 64B8-10.002, Florida Administrative Code. A provider who does not maintain patient records as required by the bill is precluded from maintaining a legal action against the insurer or its policyholder.

Currently, the law does not specify time periods within which bills for medical services must be received, although insurers are required to pay valid bills within 30 days under most circumstances. The bill requires service providers who render non-emergency services to send a statement of charges to the insurer within 35 days of initiating treatment. However, charges for emergency care and services may be sent to the insurer within 75 days after treatment is rendered. If a service provider does not submit a timely bill for its services, neither the insurer nor the insured is required to pay for the services.

Also, insurers are required by the bill to provide policyholders and their assignees, upon written request, with a report itemizing all payments made, along with a copy of the insurance declarations page and insurance policy within 30 days after such request.

Assignment of PIP Benefits

During the review of the No-Fault laws, insurers indicated that many of the legal actions stemming from PIP claims involve the determination of whether a properly binding assignment of benefits has been made, and which provider has priority when an insured has signed multiple assignments of benefits. Currently, the law does not specify how an insurer or the court is to determine whether an assignment of benefits is valid or to determine the priority of payment under multiple assignments, or for revocation

of assignments by policyholders. Subsection (8) outlines new procedures for use in determining the validity and order of priority of one or more assignment of benefits.

The bill outlines procedures for assigning PIP benefits and provides that an assignment to the provider by the insured is deemed a novation (meaning the provider in effect, replaces the insured as far as PIP benefits are concerned). The bill provides that a valid assignment of benefits must contain the words: "I irrevocably assign my benefits to..." and further provides that a provider's attorney fees are not recoverable if the provider did not accept a "valid" assignment of benefits.

In cases where the insured's obligations in a direction to pay or a letter of protection conflict with the assignment of benefits, the assignment shall void the terms of the direction to pay and letter of protection. The bill defines the terms "direction to pay" and "letter of protection". The bill also recognizes an insured may sign one or more assignments of benefits and still request the insurer reserve PIP benefits to pay lost wages to the insured. In the event an insured elects to reserve benefits for lost pay, the written directive to the insurer to reserve benefits for lost wages supersedes all assignments of benefits.

Interest Due to an Insurer; Venue for No-Fault Legal Actions

Subsection (10) provides that all amounts repayable to an insurer include the statutory interest penalty under s. 55.03, F.S. Under subsection (13), the bill restricts venue for a PIP lawsuit to the jurisdiction where the injured party resides or where the accident occurred. If an assignment of benefits has been made, venue is in the judicial circuit where the health care services were performed. Current law is silent with regard to venue.

Demand Letter

Under the demand letter provisions of subsection (14), the bill increases the number of days an insurer has to respond to a pre-suit demand letter from 15 to 21 days. If an insurer settles an outstanding bill within 15 days of receiving a demand letter, the insurer is required by the bill to pay interest authorized by law, plus a penalty, not to exceed 10 percent of the overdue amount, up to a maximum of \$350. The maximum penalty for late payments under current law is \$250. Payment of a bill within 15 days of receipt of a demand letter stays a legal action against the insurer stemming from the unpaid bill.

Access to Patient Medical Records

Subsection (16) requires that medical records of an injured person be available at the provider's principal place of business within 15 working days after an insurer requests to review the records (if such records are maintained at an alternative location). A health care provider's failure to produce patient records at the request of an insurer within 15 days precludes the provider from maintaining a legal action against either the insurer or the policyholder for payment of outstanding bills.

Examinations Under Oath

The bill clarifies which persons are subject to an examination under oath and specifies that the insurer must pay \$175 per hour for a specified licensed health care provider to attend such an examination; however, time spent in preparation is not compensable. Once requested, an examination is a condition precedent to the filing of a law suit. The bill requires that notice to an insurer of the existence of a claim must be reported by the insured within 1 year of the accident.

Independent Medical Examinations (IMEs)

Subsection (17) outlines procedures to be used for independent medical examinations (IMEs). The bill provides that if the insured unreasonably fails to appear for an IME, the cost for the nonappearance, if any, shall be paid from the insured's benefits. Insurers are required by the bill to pay the insured for the time missed from work as a result of attending an IME. The bill provides that during an IME, neither the

insurer, the insured, nor an assignee of the insured may have counsel, a court reporter, or a videographer present. However, a policyholder may request a translator, family member, or other person to attend the IME.

Application of a Contingency Risk Multiplier; Rewards Available from Insurers

Subsection (19) pertains to attorney's fees under the No-Fault law and eliminates the application of a contingency risk multiplier awards of attorney fees. The bill under subsection (21) removes the monetary limitation currently placed on the amount of a reward that may be provided to persons notifying insurers of improper billing by providers. The reward is calculated according to the following procedure: if a reduction is made due to improper billing, the insurer must pay the person a reward of 20 percent of the amount of the reduction, and if the provider is arrested, the insurer must pay a reward of 40 percent of the amount of the reduction.

Miscellaneous Provisions Regarding No-Fault/PIP Coverage

Finally, the bill clarifies that the provisions under s. 627.736, F.S., (personal injury protection benefits) do not preempt or supersede any cause of action that may otherwise be available. The bill also deletes the pending repeal of the No-Fault Law, currently scheduled for October 1, 2007. This deletion is made to section 19 of chapter 2003-411, LOF.

Section 627.737, F.S., explains the tort exemption granted by the No-Fault laws and clarifies the criteria to be met before an insured, or his or her assignees may initiate a legal action to recover non-economic or general damages.

Section 627.7401, F.S., relates to the rights of policyholders/insureds and the notification of these rights. Current law requires the Financial Services Commission to adopt a standard form, to be used by motor vehicle insurers, to notify policyholders of their legal rights under the No-Fault Law. Provisions are added by the bill to require the Financial Services Commission to adopt a form to notify motor vehicle insurance policyholders of the prohibition against soliciting a person injured in an auto accident to file a PIP claim or to initiate a legal action in tort against an insurer. The commission also is required to include notice in its form of the rewards available to consumers for reporting specified information to the Division of Insurance Fraud.

Section 627.7403, F.S., relates to the requirement for related claims brought under s. 626.737, F.S., to be consolidated into a single legal action. The bill requires the same consolidation of legal actions stemming from alleged violations of s. 627.736, F.S., the part of the No-Fault Law that outlines benefits, exclusions, and other coverages available under the No-Fault Law.

Criminal Matters Relating to No-Fault/PIP Claims

In addition to reenacting and modifying the No-Fault laws, the bill also amends various other laws relating to matters and crimes involving motor vehicle insurance. Under current law, s. 316.068, F.S., describes the form to be used by law enforcement agencies for reporting car crashes to DHSMV. Although the crash report form provides a description of the information that must be included, the law does not currently specify the information to be included on the form. Under the bill, the following information is specified and required to be included on the form:

- date, time, and location of the crash;
- description of the vehicles involved;
- names and addresses of all parties to the crash;
- names and addresses of all drivers and passengers involved in the crash;
- name, badge number, and employing agency of the officer investigating the crash; and
- names of the insurers for the parties involved in the crash.

The bill further states that if a person is not listed on the crash report as a passenger in a vehicle involved in the accident, such absence becomes a rebuttable presumption that the person was not in the crash. This requirement for passengers to be listed on the crash report by the investigating officer is designed to inhibit the ability of a vehicle owner to add the names of passengers subsequently. The amendment of a crash report after it is filed by adding the names of passengers is one method of committing fraud related to auto insurance claims that has been identified by the Division of Insurance Fraud.

Section 322.21, F.S., establishes the fees DHSMV may charge for the issuance, renewal, extension, and reinstatement of driver licenses. The bill imposes an additional fee of \$180 for reinstating a driver license following suspension for conviction of making a false or fraudulent insurance claim. Similarly, a fee of \$180 is authorized for reinstating a driver license following a conviction for brokering patients as part of a fraudulent health or motor vehicle insurance claim. The bill also requires DHSMV to revoke the driver license of any person convicted of making a false or fraudulent insurance claim or convicted of brokering patients. The provisions requiring revocation of a driver license are contained in s. 322.26, F.S.

Section 817.2361, F.S., relates to false and fraudulent insurance cards. Current law requires a motor vehicle owner to present his or her insurance card annually at the time a vehicle registration is renewed. Under the bill, the reference to an "insurance card" is changed to refer to "proof of insurance" instead. This change clarifies that it is a crime to present false information relating to auto insurance coverage, whether the information is printed on a card or is a counterfeit insurance policy, or other false proof of insurance coverage.

C. SECTION DIRECTORY:

Section 1 amends s. 624.155, F.S., relating to civil remedies against insurers.

Section 2 amends s. 627.731, F.S., relating to the purpose of the Florida Motor Vehicle No-Fault Law.

Section 3 amends s. 627.732, F.S., which contains definitions for terms used throughout the No-Fault laws.

Section 4 amends s. 627.736, F.S., which outlines the benefits insurers are required to offer holders of PIP policies.

Section 5 amends s. 627.737, F.S., which outlines the tort exemption under the No-Fault Law, and establishes the verbal threshold to be met before filing a legal action under the no-fault laws.

Section 6 amends s. 627.7401, F.S., regarding the notice an insurer is required to mail to each no-fault/PIP claimant.

Section 7 amends s. 627.7403, F.S., relating to the mandatory joinder of related legal actions.

Section 8 creates s. 627.7441, F.S., to require motorcyclists aged 16-21 to purchase mandatory motor vehicle insurance coverage.

Section 9 repeals the pending repeal date of the Florida Motor Vehicle No-Fault Law, i.e., October 1, 2007, which was passed in chapter 2003-411, Laws of Florida.

Section 10 amends s. 316.068, F.S., relating to vehicle crash report forms.

Section 11 amends s. 322.21, F.S., relating to the Department of Highway Safety and Motor Vehicles (DHSMV) and its collections of fees for issuing and reinstating driver licenses.

Section 12 amends s. 322.26, F.S., relating to the requirement for DHSMV to revoke driver licenses under specified conditions.

Section 13 amends s. 817.234, F.S., relating to filing/making false or fraudulent insurance claims.

Section 14 amends s. 817.2361, F.S., relating to false and fraudulent motor vehicle insurance cards, i.e., proof of auto coverage.

Section 15 provides an effective date of October 1, 2006 and states the law applies to auto claims arising after October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes an additional charge of \$180 charge to reinstate a driver license following conviction for filing false or fraudulent motor vehicle insurance claims. The additional funds are required by the bill to be deposited into the Highway Safety Operating Trust Fund. The Department of Highway Safety and Motor Vehicles (DHSMV) reports that in 2005, approximately 50 drivers sought reinstatement of their driver licenses following a conviction for criminal activities related to insurance claims.

Given the recent staff increases in the Division of Insurance Fraud, along with the addition of state attorneys to prosecute cases involving insurance fraud in the Miami-Dade County judicial circuit, it is likely there will more successful prosecutions involving insurance fraud in the future. It is not possible to estimate the number of convictions, however, or the subsequent number of drivers who will pay the fine to reinstate their driver licenses.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires (lines 1813-1842) insurers to notify PIP claimants regarding rewards available from DFS for reporting suspected motor vehicle insurance fraud and of the types of activities that may be fraudulent. The Financial Services Commission is required to adopt a standard form for auto insurers to use to fulfill this requirement. Insurers likely will incur some costs to reproduce the form following its adoption by the Financial Services Commission, however, the costs should be minimal.

No-Fault and PIP laws are clarified and reorganized by the bill. To the extent this reorganization and clarification ameliorates issues relating to PIP claims, litigation may be reduced, thus saving both plaintiffs and insurers time and money. It is not possible to estimate the savings associated with the bill, however.

Under the bill, PIP benefits are increased: disability/lost wages are increased from 60 to 70 percent; an additional benefit of \$10,000 for emergency care and treatment is added; deductibles and co-payments are eliminated; and the death benefit is increased from \$5,000 to \$7,000. Currently, auto insurers do

not charge a premium for these increased benefits. This means rate filings by insurers following passage of the bill likely will reflect increases coinciding with the new and increased benefits. It is not possible to estimate the magnitude of the increase, however.

An additional benefit of \$10,000 is provided by the bill for exclusive use in hospital emergency rooms, in-patient departments, and in trauma centers. Similarly, physicians who treat patients in ERs should be paid at a higher rate for treating PIP claimants who are seriously injured in auto accidents. As a result of the bill, a hospital could be reimbursed a maximum of \$20,000 for treating an insured accident victim. This is a \$10,000 increase over the maximum available for hospitals and trauma centers under the current No-Fault Law.

On lines 1854-1897, the bill requires owners and registrants of motorcycles, between the ages of 16 and 21, to purchase insurance coverage for medical payments in the amount of \$10,000 and property damage in the amount of \$10,000. This is not a requirement for PIP coverage and the required coverage is not no-fault coverage.

In order to examine the possible cost for such motorcycle coverage, both GEICO and Progressive were asked to provide cost information for three different motorcycle owners, assuming each person lives in Lakeland/Polk County, Miami-Dade County, and in Orlando/Orange County. These two insurers were asked for information because each currently sells motorcycle coverage as a stand-alone policy. Many other insurers provide motorcycle coverage as a part of an auto policy. Only Progressive provided the cost data requested. The chart that follows shows the **annual premium** for each type of coverage for each rider in each locale.

Motorcycle Insurance Coverage Prices

	Lakeland		Miami-Dade		Orlando	
	Med. Pay.	BI/PD	Med. Pay.	BI/PD	Med. Pay.	BI/PD
#1	\$2,884	\$1,011	\$3,665	\$1,285	\$3,261	\$1,144
#2	\$2,271	\$731	\$2,892	\$932	\$2,271	\$731
#3*	\$2,183	\$1,309	\$3,535	\$2,425	\$2,480	\$1,488

NOTE: Progressive does not sell property damage (PD) liability coverage for motorcycles without bodily injury (BI) liability coverage. The prices for BI/PD liability coverage provide \$10,000 in coverage for injuries caused by the insured to another person; up to \$20,000 in BI coverage if more than one person is injured, and \$10,000 in property damage coverage, i.e., 10/20/10 coverage. All of the price quotes in the chart assume each motorcycle is 2 years old and each insured has average credit.

Person #1 is a single male, age 19. He has received two traffic citations, one for reckless driving and one for speeding. His motorcycle is a Yamaha YZFR1 sport bike with an engine size of 1,000 cubic centimeters.

Person #2 is a single female, age 16. She has a clean driving record, is an honor student who has completed a driver education class, and she qualifies for all available premium discounts. Her motorcycle is a Honda CBR 600 RR sport bike with a 600 c.c. engine.

*Person #3 is a single male, age 21. He has one speeding ticket and his motorcycle is a Harley Davidson Dyna Wide Glide with a 1,450 c.c. engine. **NOTE:** Person #3's information is for comparison purposes as only riders aged 16-20 are required by the bill to purchase insurance coverage for motorcycles.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Financial Services Commission to adopt rules to implement the requirement in the bill for specified motorcyclists to purchase medical payments and property damage vehicle insurance coverage. The commission also is required to adopt a form to be used by insurers to notify PIP claimants of rewards available for reporting suspected fraudulent auto insurance claims and of the types of activities relating to auto claims that may be fraudulent in nature.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.